

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2000-092059

01/04/2005

HONORABLE EDDWARD BALLINGER, JR.

CLERK OF THE COURT
A. Moore
Deputy

FILED: 01/10/2005

STATE OF ARIZONA

GERALD R GRANT

v.

ROBERT NEAL MOSELY

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ASPC DOUGLAS MOHAVE #109404
PO BOX 5005
DOUGLAS AZ 85608-5002

COURT ADMIN-CRIMINAL-PCR
VICTIM SERVICES DIV-CA-SE

MINUTE ENTRY

Defendant filed on September 1, 2004, an untimely Notice of Post-Conviction Relief. He now seeks relief pursuant to Rule 32.1(g), Arizona Rules of Criminal Procedure, claiming that *Blakely v. Washington*, 542 U.S. ___, 124 S.Ct. 2531 (2004), is a significant change of law that applies to his case.

In *Blakely*, the United States Supreme Court held that pursuant to its decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Ring v. Arizona*, 536 U.S. 584 (2002), a defendant is entitled to a jury's determination of any fact that increases the penalty for a crime beyond the prescribed statutory maximum. However, in *Schriro v. Summerlin*, 542 U.S. ___, 124 S.Ct. 2519 (2004), the Court also held that although *Ring* and *Apprendi* constitute a significant change in the law, this change is procedural, but not a watershed procedural rule, and does not apply retroactively to convictions that are final. The Arizona appellate courts also have declared that *Ring* and *Apprendi* do not apply retroactively to convictions that are final. *State v. Towery*, 204 Ariz. 386, 64 P.3d 828 (2003); *State v. Sepulveda*, 201 Ariz. 158, 37 P.3d 432 (App. 2001), review denied.

A conviction becomes final upon the issuance of the appellate order denying review of the dismissal of the Rule 32 of-right proceeding, or when the time for filing such review has passed. *Towery*, 204 Ariz. at 390. The defendant's Rule 32 of-right proceeding was dismissed

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on July 5, 2001, and he did not seek further review. His conviction is therefore final and he is not entitled to relief under Rule 32.1(g).

IT IS THEREFORE ORDERED dismissing defendant's Notice of Post-Conviction Relief.